In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1156

JOHN C. PARENTI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the district court, denying petitioner's motion for acquittal or, in the alternative, for a new trial (Pet. App. 1-27) is reported at 326 F. Supp. 717. The opinion of the court of appeals (Pet. App. 28-29) is not yet reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 30) was entered on December 26, 1972. On January 9 1973, Mr. Justice Brennan extended the time for filing the petition for a writ of certiorari to February 24, 1973, and the petition was filed on February 22, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the district court erred in denying petitioner's motion for inspection and disclosure of exculpatory material when the government represented that it had no such material.

2. Whether *Miranda* warnings were required at the beginning of non-custodial interrogations of petitioner and his accountant by Internal Revenue Service agents.

3. Whether a document signed by petitioner was properly admitted in evidence.

4. Whether statements made by petitioner's accountant in his behalf were admissible in evidence against petitioner.

5. Whether the trial court erred in permitting the use by the government of charts in order to summarize the evidence for the jury.

6. Whether the evidence in this "net worth" prosecution was sufficient to support petitioner's conviction.

7. Whether participation at trial by an attorney from the Internal Revenue Service deprived petitioner of a fair trial.

STATUTE INVOLVED

Section 7201 of the Internal Revenue Code of 1954, 26 U.S.C. 7201, provides:

> Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not

more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

STATEMENT

After a jury trial in the United States District Court for the Eastern District of Pennsylvania, petitioner was convicted on three counts of having willfully attempted to evade and defeat substantial parts of his individual income tax liability for the years 1961, 1962 and 1963, in violation of 26 U.S.C. 7201. He was sentenced to one year in prison and fined $18,000.

The government's case was tried on the net worth method. The evidence showed, in brief, that petitioner had willfully underreported his taxable income in the following amounts (Pet. 5):

1961	$27,904.87
1962	17,964.79
1963	16,773.83
Total	$62,643.49

ARGUMENT

1. Petitioner contends (Pet. 14-16) that the trial court erred in denying his motion for inspection and disclosure of alleged exculpatory material. However, petitioner did not suggest to the trial court what exculpatory material, if any, might be available in the government's files, and the government expressly represented that it had no such material (Pet. App. A2). In such circumstances, the trial court ruling was clearly proper. Petitioner now asserts the existence of two separate alleged exculpatory facts. First, he claims that a document pertaining to the criminal tax in-

vestigation of one Fred Mathern was exculpatory in that it showed that he had never, as contested by the government, loaned monies to Mathern. That document computed deposits and withdrawals from Mathern's bank accounts; it expressly stated that petitioner's affidavit that he made loans aggregating $6900 to Mathern was not considered in the computation. But this does not indicate that the loan was not in fact made or even that the monies were not deposited from time to time or otherwise expended by Mathern.[1] Second, petitioner claims that a jeopardy assessment, for unpaid wagering taxes for the years 1952 through 1960, made by the government after his conviction, somehow indicates that the government believed he had a large cash hoard prior to the prosecution years. We see no basis for any such inference. Wagering taxes are levied on gross wagers, without regard to net profits from wagering activities. See 26 U.S.C. 4401. Thus there is no indication from the jeopardy assessment that petitioner had in fact accumulated substantial cash. And petitioner was in any event credited with significant net worth (over $88,000) at the beginning of the prosecution period.

2. Petitioner contends (Pet. 16-18) that the failure by investigating agents to provide him and his accountant with *Miranda* warnings at the outset of non-custodial interrogations rendered petitioner's signed statements inadmissible. This contention was fully considered

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[1] Moreover, there is now pending before the district court a motion by petitioner for a new trial based in part on the Mathern document as newly discovered evidence. In these circumstances consideration of the issue by this Court in the first instance is unwarranted in any event.

and answered by the district court in an opinion on which we rely (Pet. App. A3-A8). *Miranda* only applies to custodial interrogations involving significant restraints on personal freedom. In addition, there was no coercion or trickery here.

3. Petitioner also argues (Pet. 18) that the district court erred in admitting into evidence an affidavit signed by him to show the truth of the facts stated in the affidavit (the transfer of about $6900 from petitioner to Mathern in 1961). It is well established that a defendant's out of court statements are admissible in evidence against him, and petitioner's signature was established by a duly qualified handwriting expert (Pet. App. A16).

4. Similarly, petitioner contends (Pet. 19) that certain statements made by his accountant on his behalf to investigating agents were inadmissible. This contention is answered in the opinion of the district court on which we rely (Pet. App. A16-A17). The accountant was acting on petitioner's behalf when he made the statements.

5. Petitioner claims (Pet. 19-20) that the trial court erred in permitting the government to use charts to summarize its evidence at the end of this three-month trial. Petitioner's objection appears to be only that the government's charts summarized the evidence that was most favorable to the prosecution. However, petitioner also used charts to summarize the evidence most favorable to the defense. This issue was fully discussed by the district court in an opinion on which we rely (Pet. App. A18-A21). Both sides, with proper instructions to the jury, were permitted to recapitulate their evidence to aid the jury's deliberation.

6. Petitioner further contends (Pet. 20-26) that the evidence in this case, which was based on the "net worth and expenditures" method of proof, was insufficient to support a conviction. He particularly contests the evidence with respect to his satisfaction of $39,700 in liabilities during the prosecution years. However, there was ample evidence concerning petitioner's payment of these debts: petitioner's accountant testified as to these items (Pet. App. A21), and they were included in a net worth summary prepared by the accountant on the basis of information furnished by petitioner (App. 584a-586a, 669a-672a, 715a-716a)[2] and obtained from the books and records of petitioner's sole proprietorship (App. 601a-603a, 710a, 716a, 756a, 775a, 864a, 889a). The court of appeals expressly affirmed (Pet. App. A28) the trial court's determination (Pet. App. A21-A24) that the evidence was sufficient to support the jury's verdict, and this factual question warrants no further review.

7. Finally, petitioner contends (Pet. 26-27) that the participation by an Internal Revenue Service attorney in his trial deprived him of a fair trial, on the theory that criminal tax prosecutions must be tried by the Department of Justice. This case was, however, tried by Department of Justice attorneys; the Internal Reveenue attorney played no active role in the trial of the case but merely served in an essentially consultative capacity with respect to the complicated net-worth determinations necessary to the case. We do not see how such inter-agency assistance can be said to have deprived petitioner of a fair trial. We note, further, that this question was not presented to the courts

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[2] "App." refers to appellant's appendix in the court of appeals.

below. See *Lawn* v. *United States,* 355 U.S. 339, 362-363 n. 16.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 1973.